

1 HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 WELLS FARGO BANK, N.A.,
11 Plaintiff,

12 v.
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TIMOTHY J. HYLAND, et al.,
Defendants.

Case No. C16-593 RAJ

ORDER

14 **I. INTRODUCTION**

15 This matter comes before the Court on Defendants Timothy J. Hyland and Billie
16 Jo Hyland's Motion to Dismiss for Failure to State a Claim (Dkt. # 9). For the reasons
17 that follow, the Court **DENIES** the Hylands' motion.

18 **II. BACKGROUND**

19 On January 23, 2004, the Hylands took out a \$325,000 mortgage loan from
20 Commercial Federal Bank. Dkt. # 1-1 at 3. Their loan agreement is comprised of a
21 promissory note and a deed of trust. *Id.* Section 20 of the deed of trust contains a
22 provision prohibiting the borrower or the lender from filing an action for judicial relief
23 prior to notifying the other party:

24 Neither Borrower nor Lender may commence, join, or be joined to any
25 judicial action . . . that arises from the other party's actions pursuant to this
26 Security Instrument or that alleges that the other party has breached any
27 provision of, or any duty owed by reason of, this Security Instrument, until
such Borrower or Lender has notified the other party . . . of such alleged
breach and afforded the other party hereto a reasonable period after the

1 giving of such notice to take corrective action. . . . The notice of
2 acceleration and opportunity to cure given to Borrower pursuant to Section
3 22 . . . shall be deemed to satisfy the notice and opportunity to take
4 corrective action provisions of this Section 20.

5 *Id.* at 24. Section 22, which Section 20 deems sufficient to accomplish notice, specifies
6 in detail the contents of what constitutes adequate notice. *Id.* at 25.

7 On February 28, 2011, the deed of trust was assigned to Plaintiff Wells Fargo,
8 Bank, N.A. (“Wells Fargo”).

9 On February 17, 2016, Wells Fargo filed an action for judicial foreclosure on the
10 underlying property. Dkt. # 1-1. Attached to the complaint is a copy of the promissory
11 note, the deed of trust, and the subsequent assignment of the deed of trust. *Id.* at 8-30.
12 The Hylands then removed the action to this Court. Dkt. # 1. They have since filed the
13 instant motion to dismiss. According to the Hylands, Wells Fargo’s judicial foreclosure
14 action fails to state a claim because the complaint does not contain allegations sufficient
15 to establish compliance with the contractual notice provision in Section 20. In support of
16 their motion, the Hylands include a declaration with two exhibits that are not attached or
17 specifically referred to in Wells Fargo’s complaint.

III. LEGAL STANDARD

18 Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint
19 for failure to state a claim. The rule requires the court to assume the truth of the
20 complaint’s factual allegations and credit all reasonable inferences arising from those
21 allegations. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A court “need not
22 accept as true conclusory allegations that are contradicted by documents referred to in the
23 complaint.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir.
24 2008). The plaintiff must point to factual allegations that “state a claim to relief that is
25 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the
26 plaintiff succeeds, the complaint avoids dismissal if there is “any set of facts consistent
27 with the allegations in the complaint” that would entitle the plaintiff to relief. *Id.* at 563;

1 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

2 A court typically cannot consider evidence beyond the four corners of the
3 complaint. It may, however, “consider evidence on which the complaint ‘necessarily
4 relies’ if: (1) the complaint refers to the document; (2) the document is central to the
5 plaintiff’s claim; and (3) no party questions the authenticity of the copy attached to the
6 12(b)(6) motion.” *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). A document that
7 meets these criteria may be treated as part of the complaint and the Court “may assume
8 that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).”
9 *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). A court may also consider
10 evidence subject to judicial notice. *Id.*

11 **IV. DISCUSSION**

12 a. Exhibits Attached to the Hylands’ Motion

13 The Hylands have attached two documents in support of their motion: (1) a letter
14 dated November 10, 2016, which they contend comprises Wells Fargo’s only evidence
15 that it complied with the notice provision in the deed of trust; (2) a foreclosure mediation
16 report, which they offer as evidence of bad faith. Neither of these documents is attached
17 to Wells Fargo’s complaint.

18 The Court will disregard these documents for purposes of deciding this motion. A
19 document not attached to the complaint that is submitted in support of a motion to
20 dismiss may be considered only if (1) it is subject to judicial notice or (2) the complaint
21 refers to the document, the document is central to the plaintiff’s claim, and its
22 authenticity is unquestioned. *Ritchie*, 342 F.3d at 908; *Marder*, 450 F.3d at 448. First,
23 the Hylands do not argue these documents are subject to judicial notice. Second, while
24 the authenticity of these documents may not be in question, the complaint does not refer
25 to the letter or report and neither document is central to Wells Fargo’s claim. The Court
26 will not consider these documents.

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28 ORDER – 3

1 b. Sufficiency of Wells Fargo's Complaint

2 The Hylands contend that Wells Fargo fails to state a claim because its complaint
3 does not sufficiently allege that it complied with the notice provision in Section 20 of the
4 deed of trust. In response, Wells Fargo directs the Court to the following portion of the
5 complaint:

6 10. The Borrowers have failed to make the monthly payment due on
7 October 1, 2010 and in subsequent months up to and including the date of
8 filing this Complaint. Because of the default, Plaintiff has exercised and
9 does hereby exercise the option granted in the Note and Deed of Trust to
 declare the whole of the balance of both the principal and interest thereon
 due and payable.

10 Dkt. # 1-1 at 3. According to Wells Fargo, this paragraph sufficiently alleges that it
11 exercised its acceleration rights pursuant to Section 22 of the deed of trust and, by
12 implication, complied with the notice procedure therein. As noted above, the notice
13 required by Section 20 can be accomplished by complying with Section 22.

14 The Court concludes that Wells Fargo has pleaded adequate facts to state a claim
15 upon which relief can be granted. In Paragraph 10, Wells Fargo alleges that it exercised
16 its rights to "declare the whole of the balance . . . due and payable." *Id.* As the non-
17 moving party, Wells Fargo is entitled to the reasonable inference that this allegation
18 refers to its acceleration rights under Section 22 of the deed of trust. It is also entitled to
19 the reasonable inference that exercising its acceleration rights necessarily required
20 compliance with the full extent of Section 22, including the lengthy notice provision that
21 is separately defined as sufficient to constitute notice under Section 20. Accordingly,
22 Wells Fargo has alleged facts permitting the reasonable inference that it provided the
23 Hylands notice prior to filing this action.

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V. CONCLUSION

For the reasons stated above, the Court **DENIES** the Hylands' Motion to Dismiss for Failure to State a Claim (Dkt. # 9).

DATED this 30th day of September, 2016.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge